



**Office of Judges
Offices of the Insurance Commissioner**

A Guide to Your Workers' Compensation Claim Appeal



Governor Joe Manchin III
State of West Virginia

Jane L. Cline
WV Insurance Commissioner

Timothy G. Leach
Chief Administrative Law Judge



The WV Workers' Compensation Appeals System

Workers' compensation claims are managed and paid either by the insurance carrier, BrickStreet Mutual Insurance, (formerly the Workers' Compensation Commission) or by employers who provide their own coverage (self-insured employers).

Any claim management decision can be objected to by the injured worker (and, in some cases, by the employer). The objection - called a "protest" - is filed with the Workers' Compensation Office of Judges. The Office of Judges is independent of BrickStreet or the self-insured employer.

The Offices of the Insurance Commissioner of West Virginia are a state agency which has oversight authority over all workers' compensation insurance carriers and matters. The Workers' Compensation Office of Judges and the Workers' Compensation Board of Review are both part of the Insurance Commission.

Why You Received This Brochure

Your case is now before the Office of Judges because either you or the other side (the employer or the claimant) has objected to a claim management decision of the claim administrator.

What The Office of Judges Will Do

The Office of Judges will set a time limit for filing evidence and arguments, consider any evidence or arguments filed with the Office of Judges, and mail to you a written decision explaining our ruling in the claim.

Definitions of Words That We Often Use

- You will be called the **protesting party** in many of our notices if you protested the claim administrator's decision.
- You will be called the **responding party** if you did not protest the claim administrator's decision.
- The injured worker is often called the **claimant**.
- The employer is usually referred to as the employer.
- BrickStreet, or the self-insured employer's agent, is often referred to as the **claim administrator**.

What You Must Do Next If You Protest

The protesting party must give to the Office of Judges either evidence or some explanation of why the claim administrator's order was wrong. Usually, evidence already submitted to the claim administrator, with nothing else submitted, will not be sufficient to convince the Office of Judges to change the order.

Because the Office of Judges is independent of the claim administrator, we do **NOT** have copies of documents submitted to the claim administrator. Therefore, you will have to submit new copies to us.

YOU WILL LOSE your protest if you do not submit new evidence or sufficient explanation for the protest!

Evidence, or explanation for why you protested, must be filed with us in writing and a copy must be mailed to all other parties (either the employer or claimant, or their attorney if represented).

In some types of claims, the Offices of the Insurance Commissioner is formally involved and will appear as a party. In those cases, the Insurance Commission must also receive copies of any filings. Copies to the Insurance Commission are normally filed with:

BrickStreet Administrative Services
P.O. Box 431
Charleston, WV 25322

which serves as the Insurance Commissioner's claims administrator.

Deadlines For Filing Evidence

The Office of Judges will mail to you an Automatic Time Frame Order. The Time Frame Order sets a date for submitting evidence and argument to the Office of Judges.

If you cannot, for a good reason, get us your evidence before the Time Frame deadline, then you can ask us, in writing, to extend the Time Frame. If you do:

- You must explain, in your request, why you need more time.
- You must also send us the request at least 10 days before the Time Frame deadline.

Expedited (Fast) Decision Process For Claimants

The Office of Judges offers a faster decision process for certain protest issues as an option to the claimant. For those issues, the Automatic Time Frame will notify the claimant of the available option.

Once a claimant elects into the expedited process, we usually will not allow either the employer or the claimant to change the order.

Choosing the faster decision process may seem like the best choice. However, there are some drawbacks to the expedited process.

First, the time limits for both claimant and employer are very short and are difficult to extend. Remember: if you do not submit new evidence you will lose automatically so limiting your time to obtain evidence can also limit your chances of winning.

Second, a hearing will be conducted where both sides will be limited to fifteen (15) minutes each. That is a very short amount of time to get everything said and presented. If you are a claimant you may be limiting your ability to present your case.

Finally, if you are represented by a lawyer, **DO NOT ELECT THIS OPTION** without first consulting with your attorney.



Formal Hearings

Unlike in most other legal systems, you do not automatically get a hearing for your protest (except for the expedited process described in the previous section).

Instead of, or in addition to, filing your evidence in writing with us, you may also ask us to schedule a

hearing so that you or other witnesses may testify.

Often both sides agree to take testimony under oath at an agreed time and place (a deposition) instead of at a hearing.

You must request a hearing at least 30 days before your Time Frame ends.

Who Can Represent You Before Us

A claimant may represent himself or herself, or may be represented by a lawyer. Family members, friends, spouses, pastors, or doctors cannot represent claimants.

Any employer that is a corporation must be represented by an attorney. An officer of a corporation cannot represent the employer.

In many cases the employer will be supplied an attorney by their insurance carrier. Claims defense is part of the insurance premium that the employer pays. However, there is no legal provision for an attorney to be appointed for the claimant.





The Office of Judges' Decision

After the Time Frame has ended, we will send you an Order Submitting Protest. This notice will also include a list of all evidence that has been submitted to us by any party. It is very important that you review that list. If anything is missing from this list, you should immediately contact us

at the phone number included on the notice.

We will then mail to you our decision on the protest. Our decision will explain our ruling and the basis for our ruling.

We try to get all our protests decided within 90 days of the Order Submitting Protest. The expedited claims are decided within 30 days of the hearing.

Some Things You May Have To Do

Employers and claim administrators have the legal right to require a claimant to do certain things and provide certain information. Among the things a claimant may have to do are:

- Appear at a hearing, if subpoenaed, to answer questions about:
 - * Details of the injury;
 - * The claimant's health and medical history;
 - * Other matters related to the protest.
- Undergo an examination by a doctor or other expert.
- Sign a medical information release.
- Answer written questions (interrogatories).

Failure of any party to cooperate may result in the protest being decided against the non-cooperating party.

Appeal Rights

Whoever loses in our final decision has the legal right to appeal the decision to the Workers' Compensation Board of Review.

- If you want to appeal, you must send a notice of appeal to:
Board of Review
P.O. Box 2628
Charleston, WV 25329
- Notices of Appeal forms are available at our web site:
www.wvinsurance.gov/oobj/
- Generally you may not submit new evidence to the Board of Review, so be sure that you get to us, during the Time Frame, everything that you want considered.

Do You Still Have Questions?

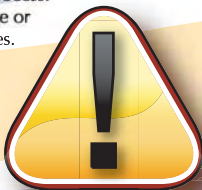
You can contact our help line, with your questions, at:

- **304/558-0852** or **304/558-1686**.
- The persons who answer the help line can only explain general things about your claim. They cannot give you help on how to win your protest or give you advice on what evidence you should file.
- The Office of Judges website, www.wvinsurance.gov/oobj/, has helpful information including sections with forms, rules, descriptions of our processes, and frequently asked questions and answers.

CAUTION!

This brochure is merely a simple guide to our process. We have **procedural** rules that control the actual **process**. This brochure does not change or overrule those procedural rules.

This brochure is not intended to replace professional legal advice. You may wish to consult with an attorney for advice or representation in any matter pending before the Office of Judges.



**Office of Judges
Offices of the Insurance Commissioner
One Players Club Drive
P.O. Box 2233
Charleston, WV 25328**

**304.558.0852 or
304.558.1686**

www.wvinsurance.gov/oof